

SCOTLAND — Court of Session [Separate Transactions] D. 8/3

ARTICLES

OF

REGULATION

Concerning the

SESSION.

WITH

His Majesties Appro-
bation thereto,



EDINBURGH,

Printed by the Heirs and Successors of *Andrew Anderson*, Printer to the
King's most Excellent Majesty, *Anno Dom. 1695.*



WILLIAM R.

OUR Sovereign Lord, having considered the following Articles of Regulation, concerning the Session, Approves and Ordains the same to be put to Execution, and to have full Force, Strength and Effect, conform to the late Act of Parliament made thereanent: And Ordains the same, together with this Approbation, both superscribed by His Royal Hand, to be Recorded in the Books of Secret Council and Session, and thereafter Published and Printed, that none pretend Ignorance. Given at the Court at Kensington, the twenty ninth day of April, 1695, and of His Majesties Reign the seventh Year.

By His Majesties Command

J. JOHNSTOUN.

WILLIAM R.

ARTICLES of REGULATION,

Concerning the

S E S S I O N.

THE Commissioners appointed by His Majesty, with the Advice and Consent of the Estates of Parliament, for Regulation of Judicatorys, in discharge of the Trust committed to them, and after long and mature Deliberation, Do in the first place, for the effectual preventing and restraining of Abuses, and exorbitant Exactions in the Session, and for the more speedy, easie, and sure Administration of Justice by the Lords thereof, humbly offer to His Majesties Approbation, the Acts, Orders and Constitutions following,

1. That in the extracting of Acts or Decrees, whatever Sheets are repeated out of former Acts already extracted, and payed for in the same Proces, shall in the Act or Decree wherein they are repeated, be only payed for as Copies, at the price of eight *shill. Scots* per sheet, and no more to be given to the Copier; and that the *quota* of Lines, or quantity of Writing of these sheets, be at least as many lines, and as much Writing in each sheet as was determined by the former Act of Regulation, and that whatever new sheets shall be added in the posterior Act, or in the Decree, shall pay each sheet as a new sheet, conform to the former Regulation, and that a broken sheet, if any be, be payed for as a whole sheet.

2. *Item*, For each Bill presented in the Inner-house, there shall only be payed for presenting, fifty eight *shill. Scots*, and for presenting the written Answers made to the same as much; And that in this manner, *viz.* That the said Payments be first payed in by the Parties to the Collector aftermentioned, and by him marked upon the said Bill and Answers before they be presented to the Lords.

3. *Item*, That where Bills and Answers are inserted in Acts or Decrees, every Bill and every Answer be reckoned in order to payment, a sheet; and that for the same so reckoned, there shall only be payed fourteen *pence Scots* for the Bill, and as much for the Answers, though either the Bill or Answers may be shorter or longer than a sheet, and that this price thus regulate, for preventing the trouble of Compting, be in that place of the three *pounds Scots* in use to be payed for the Sheets of Decrees or Acts, the rest of the Sheets always paying as above.

4. *Item*, That all the Clerks both of the Inner-house and Outer-house, be put under Pay by yearly Sallaries or Fees, and most strictly discharged of all other takings whatsoever, under the Pain of Deprivation, and of the Sum of one years Sallary beside; And that the Cognition and Tryal of their Observance hereof be by the Lords of Session, at the instance of any who shall complain. And farther, that in case any Party in any Proces, shall think fit to complain of the Clerk for undue taking, the Lords shall receive the Complaint summarly, and call both the Clerk and Party or Person alledged to have given, and first make the said Party or Person declare in Writing under his Hand, whether he hath given or not; and what he hath given, and then take tryal of the matter by Oath of the Clerk complained upon, or by any other Method of Tryal the Lords shall think just.

5. *Item*, That all the said Clerks give their Oaths at their Admission, and renew the same again the beginning of every Session, that they shall observe this Regulation, and that his Oath be conceived in the *Formula* following.

I A. B. *Do by this my great and solemn Oath, in the presence of the Almighty GOD, promise and swear, that in my Office of Clerk, or for the discharge thereof in any part, I shall not, either by my self, or any other person or way whatsoever, take from any Party or Person whatsoever, either Money or good Deed, or Bond, or Promise of Money or good Deed, directly or indirectly, in any sort over and above the yearly Sallary and Fee, allowed to me for my said Office, and that I shall content my self with the said Sallary, and hold my self honestly and strictly to the same, So help me GOD.*

6. *Item*, That the said Sallaries be as follows, *viz.* For the Principal Clerks, or the Clerks of the Inner-house, to each of them four thousand *Merks scots* yearly; and to the under Clerks, or Clerks of the Outter-house to each of them fifteen hundred *merks* yearly, to be payed out of the Dues of their whole Offices by the Collector after-mentioned. But if in any year, the said Dues shall happen not to extend so far, that then the Dues collected shall be divided amongst them proportionably, the Collectors Fees always included in manner after-mentioned, and with this Provision, that the preceeding Inlakes shall be made up, and payed out of the first of the Excess of the succeeding years, and the *superplus* of the said Dues, after compleating of the said Payments, shall be disposed of by the Lords of Session in this manner, *viz.* In the first place, for repairing of such of the Clerks who have lately bought their Places at dear Rates, which are not yet sufficiently compensated, and thereafter for such other Uses concerning the good of the Colledge of Justice, as the said Lords shall think fit.

7. *Item*, That Extracters have the Allowance of fourteen pence per Sheet of all Acts and Decrets, and no more, and that this fourteen pence be payed in by the Leidges to the Collector after-mentioned, over and above, and together with the three *Pounds scots* to be payed for ilk Sheet as formerly, and that the Collector give the said Fourteens back to the saids Extracters quarterly, to each of them as they shall instruct their share and Interest in the same, by their Minut-Books, or other sufficient Documents.

8. *Item*, That nothing be payed by way of Drink-money or otherwise, either to the Clerks, whether Principal or Under-Clerks, or to their Servants, or Dependents, either for calling Summons, or Acts, or for Copies of Suspensions, Interloquitors or Minuts, or giving in, or getting out of Papers, or getting up, or giving back Proccesses, or for any other Cause, except what is above allowed, and is to be payed in to the Collector above-mentioned.

9. *Item*, That there be a Collector Nominat and Chosen by the Lords for Collecting, Ingathering and Keeping all the Dues and Payments above-allowed, and that he have a yearly Sallary of eighteen hundred *merks scots*, to be payed out of the same Fond with the Clerks, and who shall bear a Proportional Deduction with them, in case of short-coming, and have the said short-coming or Inlake supplied in the same manner with them *ut supra*; and that at his admission, and in the beginning of every Session he take the same Oath prescribed to the Clerks *mutatis mutandis*; and that he find sufficient Caution for the discharge of his Office; and that he mark and sign the Payments made as above appointed, upon every Act, Decreet, or other Writ that are to pass his hands: And that the saids Writs make no Faith unless by him marked as said is. And to the effect the Clerks may have a sufficient Check upon the Collector, That the Collector sign their Minut-books once every Week, at such a time as he and they shall agree.

10. That



10. That for hereafter in admitting Clerks of the Session, whether for the Inner or Outer-house, the Lords of Session observe the following Rule, *viz.* That they admit no person to be a Clerk in the Inner-house, unless he be an Advocate or Writer to the Signet, and has served as such three years before; And next, that they take strict Tryal of the Ability and Integrity of all Clerks they shall admit, for performing their respective Offices, and that every Clerk in the Inner-house, shall at his Admission make Faith, and purge himself by his great Oath; that he hath not given, nor promised, directly or indirectly for procuring or obtaining his said Office and Place, more than four thousand *merks*, or an years Salary; and that the Clerks of the Outer-house make Faith, and purge themselves in like manner, that they have not given nor promised, directly or indirectly, for procuring and obtaining their said Office and Place, more than one thousand pound *scots*, or an years Salary thereof.

11. *Item*, That to prevent all slackness in the Clerks, in discharge of their Offices, the Lords take course that the Leidges be by them diligently and faithfully served, under such Rules and Certifications as they shall think meet.

12. *Item*, That the Registers immediatly under the Clerk-Registers keeping in the lower Parliament House, or any where els be patent to all the Leidges, without any payment or other acknowledgment of that sort, to be made to any for sight of the Minut Books; and that for searching in the saids Registers, there be there be only payed a Rix Doller to the Registers Servant; And that for the Extracts to be taken out of the same, there be payed as foliows, *viz.* Of any Writ past and Registrat since the year 1660, the double of the Extracts of Decrees given out by the Clerks of Session, which makes six *pounds scots* for each Sheet, and this six *pounds* to be both for writing and signing: And of any Writ registrat before the year 1660, the treble, which makes nine *pounds scots* for each sheet writing and signing, *ut supra*. *Item*, That there be only payed to the Register, for any Petition given in to be presented in Parliament twenty *merks scots*, and for the first Extracts of Acts, and Decrees of Parliament, in favours of Privat Persons, one hundred *merk scots*; and for the second Extracts thereof twenty *merks* money foresaid; And that there be nothing more payed for the said Petitions or Extracts under the Name of Drink money, or upon any other pretence, to any other Person whatsoever: And that the Register exact no more in time coming for his Sign and Subscription nor a Merk *scots* as was in use before the year 1686. And that if the Register or his Servants transgress in the Premisses, the Register shall be Tryed and censured by the Lords of Session, and his Servants shall be in like manner tryed by them, and shall be censurable by Fining, Imprisonment, or otherways, as the Lords shall see cause.

13. That the side-Bar, commonly so called in the Outer-house be wholly taken away; that is to say, That no Lord of Session be for hereafter allowed to call any Cause there; except only that the Ordinary on the Bills, may go there to his wonted place and Station, and call and hear Parties, in order to the passing or refusing of Bills, according to the Custom before observed: And that it be farther declared, that if any of the saids Lords, shall go and call Causes at the side-Bar, hereby discharged; neither the Parties, nor their Advocats, nor the Clerks shall be obliged to answer, or attend; nor shall their not answering, or not attending, be prejudicial to them in any sort. *Item*, That to Supply any good use, that the foresaid side-Bar, might have served for; that for hereafter the Lord Ordinary in the Outer-House, shall have and make use of his sitting, and time on the Bench in the Outer-House, every *Saturday* forenoon during the Session, for calling such Causes, as having been called by him, in order of the Rolls, on the preceeding days of that Week, and not put to any Period, were formerly in use to have been called again by him at the side Bar; And for that end, that no Acts be called on the said *Saturday*, until the Lord Ordinary go through the saids Causes, to be called again as said is. And that the Ordinary take care on the preceeding days of the Week, the Clerks may have sufficient time to call their

Acts, if they find the said Calling prejudged by the said appointment of the *Saturday*, in lieu of the said Bar.

14. That to shorten Proceffes, Acts, and Decrets, the Lord Ordinary that hears the Cause, and is to report the same, take in the Minuts from the Clerks, after they are shown to both Parties; and that if needful, he reform the same, and thereupon report the Cause, notwithstanding of any thing in the contrary, contained in the late Act of Parliament, anent Advocats their subscribing of the Minuts of Debate, and that the Minuts so signed by the Ordinary, be patent to the Parties, in the Clerks hands.

15. That Causes called in presence, and appointed by a particular deliverance to be heard on a certain day, be peremptorily called that day, according to the Order, and Date of the said Deliverance; and that a Roll of them be made for that end; and that the Cause so ordered, shall have the same Right to be called at its day, as Causes inrolled in the Books of Inrollment, whose Order the Lords cannot alter; and that no Causes be called by the ordinary Roll that day, until the Cause thereto remitted be heard, and discussed.

16. That all points, that the Lords upon Reports, or Bills, shall think fit to hear in presence, be either immediatly called and debated as to that Point, or otherways be inrolled in the Roll of Causes, in the Inner-house, according to the Date of the Lords Deliverance; and that for that end, the Parties Procurators who demand a Hearing, be always ready to debate, or that otherways the Lords may determine upon the former debate.

17. That Acts and Decrets against more Debtors than one, may be Extracted in parts relating particularly to any of the Defenders, as if they did proceed upon a single Lybel; And that Acts and Decrets upon competition of Rights may be extracted in parts, each Party extracting the Decreet of his preference to others, with the grounds thereof, so as the Party postponed needs not extract the Debate, anent his being postponed; but only cause relate in general, that such Rights are preferred to him, as, *V. G.* If there be five Competitors, the Party preferred in the first place, needs extract no more but the production of all their Interests, with the grounds of his preference to the other four, and he that is preferred in the second place, needs not extract the grounds, and debate whereupon the first is preferred to him; but only after a simple Narrative, that the first was preferred, deduce the Grounds, and debate whereupon he is preferred to the last three, without inserting the grounds of Debate betwixt the three that are postponed to him: And so for the rest of the Competitors, and that how soon any Competitor is preferred he may extract his preference at his pleasure, in the manner above-mentioned, albeit the Competition as to the rest, be not determined.

18. That in time-coming, Decrets *in foro* be not reduced and laid open upon Nullities, further than *ad hunc effectum*, to hear the Parties anent redressing his Prejudice by that Nullity; and that it be declared, that the rest of the Interlocutors in the foresaid Decreet do stand, *tanquam res hactenus judicatae*.

19. That in all concluded Causes, when the Lord appointed to prepare the same for Advising, doth advise the saids Causes; the Advocats for the Parties, are either to object at the preparing what they have to say against the Report to be made, or to make their said Objections within at most fourteen days thereafter; which Objections with the Answers thereto, shall be considered by the said Ordinary, and shall be subjoyned to the Report. And in case this be neglected, the Party neglecting shall not be heard at the Advising, until he Consign an Amand of five *Dollars*; and that no Objection be made at the Advising against the Act, but against the Report, as to the Points proven or not proven.

20. That there be no Decreet of Certification upon Summons of Reduction and Improbation, or of simple Improbation in Absence, unless the Cause be first called in the ordinary manner, before the Lord in the Outer-house; and that the said Lord do then appoint it to be Inrolled, according to the Date of its Calling

ling: and if when the said Summons comes to be called in its Course, the said Decreet of Certification shall still happen to be given in absence, then it shall remain unextracted for the space of four Weeks at least thereafter.

21. That in the case of other Decrees in absence, after calling of the Summons by the Clerk in the Outer-house in the ordinary manner, the Cause be inrolled in the beginning of the next Weeks Roll, and inrolled accordingly; and at the next calling in its Course, either Decreet be given in absence, or if the Defender compare; that he be admitted to see and answer; and that the Cause be again inrolled, and proceeded in thereafter, in the ordinary manner.

22. That in all Causes where Probation is admitted, and made by Writ or Witnesses; the Lord Ordinary for concluded Causes, who prepares the same for Reporting, may consider the the said Probation; and if he find it clear, that he mark it to be so: and that in that case, the Probation and Cause be advised summarily without order of the Roll.

23. That for the remeiding of the Abuse of the multiplying of Bills, and of their superfluous length; the Lords shall upon occasion, as they find any Bill to be groundless, or in its length superfluous and litigious, Fine the Advocat, Subscriber and Party, in such a pecuniary Mult, to be instantly payed, as they shall judge reasonable. And farther, that in all Causes where the Lords at the Conclusion thereof, shall find the Succumber to have been calumnious or litigious; they shall take in an Accompt from the Party prevailing, upon his Oath of the Expenses and Damage that he hath been put to in that Process, and that then they decern: or in case of Extravagancy, Tax and Modifie the said Expenses and Damage, to be payed by the Succumber to the Party prevailing as said is: And this be more squarly and largely done in time coming, for the better preventing of calumnious and litigious Pleas and Processes.

24. That in place of the Allowance, formerly in place of Adjudications, or Appryfings, there be only for hereafter, a short Abbreviat made of the Decreet of Adjudication, after the manner of the said Allowance, and that this Abbreviat be at the pronouncing of the said Decreet, signed by the Lord Pronouncer thereof, and given in to be recorded within threescore days after the pronouncing of the said Decreet, conform to the Act of Parliament anent Recording of Appryfings: and that the Recorder for Recording thereof, take no more than fourty shilling *scots*, whatever be the Sums of Money or Lands contained in the said Decreet of Adjudication, or whatever may be the length thereof: and that the person Ingiver of the said Abbreviat, his Name be marked, and he sign to it as is appointed at the Register of Seafins: and that the Recorder of the said Abbreviat, do likewise mark immediatly after Recording thereof, whether the Decreet whereof it is the Abbreviat, be then Extracted or not; and in case the Recorder of the said Abbreviats, shall not record the same duely as said is, but shall happen to take in any Abbreviat after the said threescore days, that he be therefore upon Tryal, deprived by the Lords of Session.

25. That for the cutting off of groundless and expensive Pleas, and Processes in time coming, the Lords of Session sustain no Reduction of any Decreet-Arbitral, that shall be pronounced hereafter upon a subscribed Submission, at the Instance of either of the Parties Submitters, upon any Cause or Reason whatsoever, unless that of Corruption, Bribery or Falshood, to be alledged against the Judges Arbitrators who pronounced the same.

26. That in all Actions of Sale of Bankrupts Lands upon the late Acts of Parliament, either depending, or to be hereafter raised; the Ranking of the Creditors, and others concerned, shall proceed, and first be concluded by Decreet, at the least to the Avail of the Price of the Lands found, and Stated by the Lords of Session, before the saids Lands be exposed to Roup and Sale.

27. That in the case where a matter brought before the Council, is by them Remitted to the Session, to be there summarily discussed: the same shall not be

brought in before the saids Lords of Session, to be Debated and Discussed in the Forenoon, to the hindrance of the ordinary Course of the Roll, and to the prejudice of the Leidges therein concerned ; but shall only if the Lords think fit, be brought in to be debated and discussed as said is, in such an afternoon as they shall appoint.

28. That to evite the Confusion and Abuses that oft-times happens in Actions against Debtors, where a Multitude of Debtors are called ; for hereafter in any Action to be intended before the Lords of Session against Debtors, there be not above six Defenders called in the same Summons.

29. That notwithstanding of the Regulation formerly made of Advocats Fees in the Act of Parliament 1672 ; yet to the effect, the said Regulation may be better observed in time coming, that the saids Fees be regulat according to the Quality of the persons who shall employ them in manner following, viz. That for one Consultation as is therein defin'd, a Nobleman shall not give more to an Advocat than nine *Dollers*, or two *Guinies* at the most. That a Barron or Knight, shall not give more than seven *Dollers*, or one *Guiney* and a half at most. That any other Gentleman or chief Burgess, shall not give more than four *Dollers*, or one *Guiney* at most. And that all the rest of the Leidges, or any other Person, shall not give more than three *Dollers* at most. And farther, that there shall not be above three Advocats called to the Consulting the drawing of the Information, after Dispute to the Lords, and to the Advocat that draws the same, (of these three) may be given a full Fee, according to the foresaid Regulation : and to the other two, the half thereof, and no more.

30. That in all Processes before the Session, it shall be lawful to any of the Parties, in any Step of the Process, to Object against the other : and he either by himself, or some other for him, hath given or promised to one or other of his Advocats, or to some other person, directly or indirectly for the Advocats behove, more than is allowed by the foresaid Regulation. And in this case if the Party confess, or be holden as confest, then he shall be immediatly Fyned by the Sentence of the Lords, in one thousand pounds *scots*: whereof one thousand *merks* to be payed to the Parzy Objecter, and five hundred Merks to the Poors Box. And that Letters on a simple Charge of six days, and other Executorials necessary, be direct for payment thereof. And furder, if the Party discovered to be guilty as said is, shall happen to be the Pursuer, then the Process shall Stop until the foresaid Fine be payed as said is, without prejudice of the foresaid Execution for the same. And in case the Advocat alledged to have received more than the said Regulation shall not after the Givers confessing, or being holden as confest, purge himself by his Oath in the Terms above set down, that he has received no more, then he shall be fined in the Quadruple of the Fee, allowed to him by the Regulation, and transgressed as said is, to be payed into the Poors Box. And furder, the said Advocat transgressing, not purging himself as said is, shall be debarred from the Exercise of his Imployment for the space of three Months of Session time, without compting the time of Vacation.

31. That the whole Articles of Regulation, contained in the Act of Parliament 1672, be declared to be in full force, except in so far as they are hereby Innovated or Altered.

Given at the Court at Kensington the twenty ninth day of April 1695. And of His Majesties Reign the seventh Year.

By His Majesties Command,

J. JOHNSNOUN.



WILLIAM R.

Right Trusty and right well Beloved Cousin and Counsellor, Right trusty and entirely Beloved Cousin and Counsellor, Right trusty and right well Beloved Cousins and Counsellors, Right trusty and well Beloved Cousins and Counsellors, Right trusty and well Beloved Counsellors, Trusty and well Beloved Counsellors, and trusty and well Beloved, We greet you well. Whereas we have Approved and Signed the Regulations, Agreed on by you, and Transmitted to Us, concerning the Session, Advocats and Clerks, and that We have Ordered them to be Printed; We do heartily Approve of your Zeal and Diligence in the said Matter, with which We are the better Satisfied that you have been Unanimous in your Resolutions. We Require you to go on, as soon as conveniently you can, to Enquire further into any Abuses committed in any other Judicatories or Offices of Trust, according to the Tenor of the Act of Parliament: And having Resolved upon such Regulations as you shall find necessary for Remedying the same, to Transmit them to Us, that We may Signify Our Pleasure thereanent. In the mean while, We Assure you of Our Countenance, and of all due Encouragement to Finish what you have Begun, since We are desirous of nothing more than that Justice should be Administered, and all Offices Executed in a manner, as fair, and as little Burthensome to Our People as is possible: So We bid you heartily Farewel. Given at Our Court at *Kensington*, the 29th, Day of *April*, 1695. And of Our Reign the 7th. Year.

By His Majesties Command,

J. Johnston.



